IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B.CIVIL WRIT PETITION NO.6677/2003.

Mahesh Dan Singh and Others. **VERSUS** State of Rajasthan & Others.

12.10.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.Mahesh Dan Singh petitioner No.1 in person.
Mr.B.K.Sharma, Deputy Government Advocate.
Mr.K.K.Mehrishi, Senior Counsel assisted by
Mr.Timan Singh, for the respondents.

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The petitioners are Ex-Servicemen, to whom vide order dated 16.07.1973 allotment of land was made out of khasra No.10 in village Gandlai, Tehsil Lalsot, District Jaipur. Each of the petitioners was allotted 8 bighas of land in accordance with the provisions of Rajasthan Land Revenue (Allotment of Land for Agricultural Purpose) Rules, 1970 (hereinafter referred to as "the Rules of 1970").

As per the case of the petitioners, the possession of the land was handed over to the petitioners on 18.07.1973. This possession was of course disputed by the respondents. On 26.07.1973 entries were made in the revenue record and the mutation in favour of the petitioners were also open. The case of the petitioners is that between the year 1973 to 1977 the petitioners have even cultivated the land after having come into possession after allotment.

An application under Rule 14 sub-rule (4) of the Rajasthan Land Revenue (Allotment of Land for Agricultural Purpose) Rules, 1970 was moved by the respondents for cancellation of the

allotment made in favour of the petitioners and vide judgment dated 30.12.1974 the said allotment was canceled by the Additional District Magistrate, Jaipur. The petitioners in the meanwhile, preferred an appeal against the aforesaid judgment and on 18.01.1975 an interim order of stay was granted in favour of the petitioners by the Revenue Appellate Authority in the appeal filed against the judgment dated 30.12.1974. In spite of the aforesaid interim order passed in favour of the allottees, the petitioners, on 12.03.1976, the Tehsildar Lalsot, canceled the mutations made in favour of the petitioner in respect of the land allotted to them. While the appeal was pending before the learned Revenue Appellate Authority and even the interim order of stay dated 18.01.1975 was in operation, on 26.10.1977, the land in dispute came to be allotted in favour of the respondents. This fact, as per the case of the petitioners, was not in the knowledge of the petitioners as the allotment was made without giving notice to the petitioners. The learned Revenue Appellate Authority after hearing the appeal, vide judgment dated 31.05.1989, allowed the appeal filed by the petitioners against the judgment dated 30.12.1974 and set aside the judgment dated 30.12.1974 and restored the allotment made in favour of the petitioners as the said order of allotment dated 16.07.1973 was found to be valid and in accordance with law.

It is not in dispute that after the judgment of the learned Revenue Appellate Authority dated 31.05.1989, the respondents did not challenge in any Forum the said judgment of the learned Revenue Appellate Authority passed in the appeal and restoring the order of allotment dated 16.07.1973 in favour of the petitioners. Thus, the judgment dated 31.05.1989 attained finality and the order of allotment dated 16.07.1973 was not in question before any Forum and the petitioners were entitled to be placed in the same position which prevailed prior to the

judgment of the Additional Collector dated 30.12.1974.

The petitioners on being advised thereafter approached the revenue authorities for the possession of the land which had in the meantime allotted in favour of the respondents but on one pretext or the other the revenue authorities did not hand over the possession to the petitioners. As no action was taken by the revenue authorities for handing over the possession to the petitioners, the petitioners on being so advised filed an application for cancellation of allotment of land made in favour of the respondents by moving an application under the Rules of 1970. The aforesaid application remained pending for a considerable period of time and as such the petitioners' approached this court in S.B.Civil Writ Petition No.2533/1996 which was decided with the direction to the Collector, Dausa to decide the application filed by the petitioners within three months. The Collector, Dausa vide his judgment dated 14.05.1998 decided the application filed by the petitioners in favour of the petitioners and the respondents were found to be trespassers over the land.

Being aggrieved by the judgment of the Collector, Dausa the respondents preferred an appeal before the learned Revenue Appellate Authority which was also dismissed vide order dated 16.12.2000 and the second appeal filed by the respondents before the learned Board of Revenue was also dismissed vide judgment dated 27.03.2003.

The respondents thereafter, preferred S.B.Civil Writ Petition No.4155/2003 [Jagdish Vs. State of Rajasthan] before this court which also came to be dismissed by the learned Single Judge vide judgment dated 01.08.2003.

It would be relevant here to incorporate the operative portion of the judgment of the learned Single Judge which reads as follows:-

> "There is no dispute that the earlier order passed by the Additional Collector, Jaipur, cancelling the allotment made in favour of the respondents on 16.07.1973, had been stayed by the Revenue Appellate Authority, Jaipur vide order dated 18.1.1975. The appeal was, ultimately, allowed by the Revenue Appellate Authority, Jaipur vide order dated 31.5.1989. The submission of the learned counsel for the petitioner that the order dated 31.5.1989 passed by the Revenue Appellate Authority was a nullity on the ground that no steps were taken by the respondents for bringing legal representatives of father of the petitioner on record cannot be accepted as the allotment made in favour of the father of the petitioner in the year 1977 itself was wholly illegal and irregular in view of the interim order passed by the Revenue Appellate Authority on 18.1.1975.
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> Rule 14(4) of the Rules of 1970 is reproduced hereasunder:-
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> > "(4) The Collector shall have the power to cancel any allotment made by a Sub-Divisional Officer (or a Tehsilder under the rules repealed by Rule 21 of the Rules) either suo-motu or on the application of any person in case the allotment has been secured through fraud or misrepresentation or has been made against rules or in case the allottee has committed breach of any of the conditions of allotment.
> >
> > Provided that no such order to the prejudice of any person shall be passed without giving such person an opportunity of being heard."
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> A bare reading of the above provision would show that the Collector either suo motu or on the application of any person could cancel the allotment on the grounds mentioned in this rule. It is only the allottee who is necessary party. The father of the petitioner was only a

> complainant and the appeal pending before the Revenue Appellate Authority could not have been treated as having abated and order passed on 31.5.1989 a nullity.
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> The order dated 31.5.1989 passed by the Revenue Appellate Authority could have been further challenged by the petitioner before the Board of Revenue, however, the same having not been done, the irregular allotment made in favour of the petitioner could not have been sustained in the eyes of law.
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> Since there have been concurrent findings of all the authorities below and even the Board of Revenue having considered all the submissions made by the counsel for the petitioner, in the facts and circumstances of the present case, I find no ground for any further interference of this court.
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> Accordingly, the writ petition is dismissed as having no merit."

From the above judgment of this court dated 01.08.2003, it is clear that this court clearly held that the order of allotment made in favour of the present petitioners dated 16.07.1973 had been upheld by the learned Revenue Appellate Authority vide judgment dated 31.05.1989 and the aforesaid judgment dated 31.05.1989 not having been challenged by the present set of respondents in any Forum, the said order dated 16.07.1973 attained finality in favour of the present petitioners.

The submission of the learned counsel for the petitioners who have appeared in person before this court is that the order of allotment dated 16.07.1973 made in favour of the petitioners having been found to be in order vide order dated 31.05.1989 passed by the learned Revenue Appellate Authority and the same not having been challenged in any proceedings, the petitioners are entitled to the possession of the land and accordingly the

principal prayer made by the petitioners in this writ petition, namely that the respondent revenue authorities should be directed to deliver the possession of the land in question to the petitioners after evicting the trespassers thereon and restore the position as regards possession which was prevailing prior to the order of Additional Collector dated 30.12.1974.

The learned counsel appearing on behalf of the private respondents has raised certain objections with regard to the maintainability of the writ petition. The submission of the learned Senior Counsel Shri Mehrishi appearing on behalf of the private respondents is that in this writ petition the relief of possession can only be granted after following the procedure provided even for evicting the trespassers and until and unless the procedure as prescribed under the law is not complied with the possession of the land cannot be handed over to the petitioners from the respondents.

The learned Senior Counsel has also submitted that the petitioners have themselves filed a suit under Section 183 of the Rajasthan Tenancy Act for the relief of possession and eviction of the trespassers and until and unless that suit is decreed in their favour, the petitioners cannot be held entitled to the relief of possession by means of the present writ petition.

The learned Deputy Government Advocate has also contended that the petitioners having filed the suit under Section 183 of the Rajasthan Tenancy Act cannot be permitted to seek the relief of delivery of possession by means of the present writ petition and thereby the learned Deputy Government Advocate has also supported the stand of the private respondents.

The petitioners during the pendency of the writ petition also filed an application for taking on record the subsequent events and the documents which have been filed along with the said application. The said application was filed on 14.08.2006. In the said application dated 14.08.2006, it has been submitted by that the petitioners approached the Divisional Commissioner by means of an application dated 27.05.2006 and the Divisional Commissioner has written to the Collector, Dausa that the possession of the land should be handed over to the petitioners. The representation dated 27.05.2006 has been filed as Annexure-A/1 to the said application dated 14.08.2006. It has then been submitted that on the receipt of the letter from the Divisional Commissioner, the Collector, Dausa has written to the S.D.M. on 31.05.2006 that in case there is no stay order prohibiting the delivery of possession, the possession of the land should be handed over to the petitioners and compliance reported. The Collector, Dausa has also drawn the attention of the S.D.M. that earlier also on 31.03.2006 a letter to this effect was written to the S.D.M. but the S.D.M. has not cared to take any action on the same. This letter of the Collector has been filed as Annexure-A/2 along with the application dated 14.08.2006. The S.D.M. on 03.06.2006 after the receipt of the letter of the Collector wrote a letter to the Tehsildar directing him to handover the possession to the petitioners and report compliance. The letter of the S.D.M. has been filed as Annexure-A/3 to the said application dated 14.08.2006. The Tehsildar on the receipt of the aforesaid letter from the S.D.M. has sent his reply on 09.06.2006. The Tehsildar has written to the S.D.M. that in respect of the delivery of the possession of the land, the police force would be required and at present crop is standing on the land and the matter is reported to be pending before the Division Bench of the High Court against the judgment of the learned Single Judge dated 01.08.2003 but there is no

stay order from the Division Bench. It is further submitted that in spite of the above orders having been passed, the revenue authorities have failed to deliver the possession to the petitioners.

Admittedly, in this case, against the judgment of the learned Single Judge dated 01.08.2003, though an appeal has been preferred by the private respondents before the Division Bench but neither there is any order staying the cancellation of allotment made to the respondents nor any stay with regard to the delivery of possession. Thus, so far as the impediment on account of any proceedings being pending before the court, there is none before the respondents to have handed over the possession to the petitioners, as mere filing of an appeal does not amount to stay.

Learned counsel for the private respondents also sought to contend that the petitioners have acquired a right on account of the fact that they are trespassers and have acquired the rights by adverse possession in terms of Section 63 Clause IV of the Rajasthan Tenancy Act, 1955.

So far as the above submission is concerned, firstly, the said contention was available to the respondents at the time they filed their objections against the allotment by way of appeal under Rule 14(4) in the year 1974 and in case, the said objections have been taken, the same have attained finality on account of their dismissal by the learned Revenue Appellate Authority vide judgment dated 31.05.1989 and are barred on the principle of *res judicata*. The learned Senior Counsel appearing on behalf of the respondents was not in a position to submit as to whether the above objections had in fact been raised in the said appeal filed under Rule 14(4) in the year 1974. Suffice it

to say that if the said objections have not been raised the same are now barred on the principles of constructive *res judicata*.

In the present case, the Rules for allotment provide for the category of land which is capable of being allotted and also the categories of land which are not capable of being allotted. In the instant case, the allotment was made in respect of "unoccupied land" as it has been consistently held that possession of the trespassers, if at all the respondents were in the possession of the same, the land cannot be held to be "occupied land" and not available for allotment. Occupied land has been defined under the provisions of Rajasthan Tenancy Act, 1955 under Clause (27) of Section 5 of the Rajasthan Tenancy Act, 1955, which reads as under:

> "(27) **"Occupied land"** shall mean land which for the time being has been let out to and is in the occupation of, a tenant, and shall include Khudkasht, and "unoccupied land" shall mean land which is not occupied."

It may be stated that the above definition has been provided under the Rajasthan Tenancy Act, 1955 whereas the term "unoccupied land" has been used in the Allotment Rules of 1970 framed under the Rajasthan Land Revenue Act, 1956. Section 3 of the Rajasthan Land Revenue Act, 1956 provides that the words and expressions used under the Rajasthan Land Revenue Act unless the context otherwise requires shall have the same meaning as has been provided under the Rajasthan Tenancy Act, 1955. Section 3 of the Rajasthan Land Revenue Act, 1955 reads as under:-

> "**Sec.3. Interpretation.**-(1) In this Act, unless the subject or context otherwise requires,-
>
> (vii) Words and expressions defined in the Rajasthan Tenancy Act, 1955 shall, wherever used

herein, be construed to have the meaning assigned to them by the said Act."

Thus, for interpreting the words "unoccupied land" for the Rules of 1970, though framed under the Rajasthan Land Revenue Act, 1956, the definition of "occupied land" and "unoccupied land" as provided under Clause (27) of Section 5 of the Rajasthan Tenancy Act, 1955 can be taken note of.

Admittedly, in the present case, the land in question has never been let out to the respondents and the allotment made to them on 26.10.1977 i.e. After the allotment to the petitioners on 16.07.1973, as such on 26.10.1977 the land was not available for allotment to the respondents. Thus, in the light of the definition of the occupied land, the land in question cannot be said to be occupied land by the respondents. The land not being "occupied", the same becomes unoccupied land in view of the definition provided under clause (27) of Section 5 of the Rajasthan Tenancy Act, 1955. At the same time the land having been allotted to the petitioners prior in point of time to the petitioners on 16.07.1973 it was "occupied land" and was, therefore, not "unoccupied land" capable of being allotted to the respondents on 26.10.1977.

The objection of the respondents that they cannot be evicted even if they are trespassers, save in accordance with the procedure provided under the law needs to be rejected as once the judgment of the Additional Collector dated 30.12.1974 was set aside in appeal by the learned Revenue Appellate Authority vide judgment dated 31.05.1989, the petitioners were liable to be restituted to the position which prevailed prior to the judgment dated 30.12.1974 in accordance with the principles as contained under Section 144 CPC which is also applicable to

the revenue courts under the provisions of Section 208 of the Rajasthan Tenancy Act, 1955 which provides that the provisions of Code of Civil Procedure, 1908 except the provisions which may be inconsistent with the provisions in the Act shall apply to the suits and proceedings under the Revenue Laws. Thus, on the above principle of equity as enshrined in Section 144 CPC, the petitioners who were dispossessed, after their allotment dated 16.07.1973 was held to be invalid by the Additional Collector vide judgment dated 30.12.1974 nor entitled to be restituted to the same position which prevailed prior to 30.12.1974. In spite of the fact that the judgment dated 30.12.1974 of the Additional Collector had been set aside and order of allotment upheld, as has been recorded by the learned Single Judge in his judgment dated 01.08.2003 in S.B.Civil Writ Petition No.4155/2003 filed by the respondents, that the allotment was made to the respondents in spite of the fact that learned Revenue Appellate Authority had granted a stay on 18.01.1975 in favour of the present petitioners against the judgment dated 30.12.1974, the petitioners after 31.05.1989 were liable to be placed in the same position as they were prior to 30.12.1974. Thus, the petitioners need not, in my opinion, follow the procedure as provided under Section 183 of the Rajasthan Tenancy Act, 1955 when they can have recourse to the provisions of Section 144 CPC for restitution of the position which prevailed prior to the order dated 30.12.1974. It may only be added that sub-section (2) of Section 144 CPC clearly provides that no suit shall be instituted for the purposes of obtaining any restitution or other relief which can be obtained by the application under sub-section (1) of Section 144 CPC. The petitioners, in my view, who are Ex-servicemen and to whom the land was allotted taking into consideration their services to the nation, have approached all the authorities but have been deprived of their rights to the land in pursuance of a valid order of allotment dated 16.07.1973

for more than a period of thirty years and have approached this court for a direction to this effect. On the other hand, the respondents who are trespassers and had no title over the disputed land have successfully deprived the lawfully authorized persons, the petitioners from the fruits of their allotment. It is surprising that a period of nearly 15 years has elapsed between the judgment of the learned Additional Collector dated 30.12.1974 and the decision of the appeal by the learned Revenue Appellate Authority dated 31.05.1989 and in spite of the judgment dated 31.05.1989, the petitioners have not been able to obtain possession of the land and the Revenue authorities have only now, in May-June, 2006, as is evident from the documents (Annexures A-1 to A-4) filed along with the application dated 14.08.2006, decided to act to provide possession of the land to the petitioners. Thus, I am not inclined to accept the objection raised by the respondents, both the private respondents as well as the State Functionaries, that the petitioners have the remedy of filing a suit under Section 183 of the Rajasthan Tenancy Act, 1955 which in the light of the provisions of sub-section (2) of Section 144 CPC, in my opinion, is not maintainable. The above objection is, therefore, dismissed.

In view of the above, the land being unoccupied, it was capable of being allotted to the petitioners under the Rules of 1970. So far as the respondent revenue authorities are concerned, as has been noticed on the basis of the documents which have been furnished along with the application dated 14.08.2006 (Annexures A-1 to A-4), the revenue authorities from the Divisional Commissioner to the Tehsildar have all agreed with the fact that the possession of the land in question deserves to be handed over to the petitioners on account of the allotment made in favour of the petitioners on 16.07.1973 and the same having been found to be valid.

Consequently, I am of the view that the petitioners need not proceed against the respondents by means of any proceedings under Section 183 of the Rajasthan Tenancy Act, 1955. It is the duty of the revenue authorities that in pursuance of the allotment made in favour of the petitioners on 16.07.1973 of the unoccupied land, to handover the possession of the land in dispute to the petitioners. This court had on 12.04.2004 prima facie after being satisfied had passed the following interim order :-

> "अप्रार्थीगण के स्थगन प्रार्थना-पत्र के नोटिस जारी किये जावें ।
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> आगामी आदेश तक जो कार्यवाही नियम 14(4) राजस्थान लेण्ड रेवेन्यू (अलाटमेंट आफ लेण्ड फार एग्रीकल्चर परपज) रूल्स, 1970 के अन्तर्गत अतिरिक्त जिला कलेक्टर, दौसा के कार्यालय में विचाराधीन है, को स्थगित रखने का निर्देश दिया जाता है ।"

In the light of the view which I have already taken and expressed above I also draw support from the interim order dated 12.04.2004 that there was no need for any further proceedings to be taken in the matter either under Section 183 of the Rajasthan Tenancy Act, 1955 or under Rule 14(4) as the allotment dated 16.07.1973 in favour of the petitioners had already been found to be valid and subsequent allotments made in the year 1977 to the respondents cannot stand as the land was not available for allotment since the same already stood allotted to the petitioners on 16.07.1973. Consequently, the writ petition is allowed. The stay application also stands disposed of.

The respondents No.1 to 4 are directed to ensure that the possession of the disputed land, allotted to the petitioners vide order dated 16.07.1973, as has been ordered by the respondents themselves in the Annexure-A/1 to Annexure-A/4 be handed over to the petitioners immediately within a period of

one week of the receipt of the certified copy of this order so that the petitioners can cultivate the Rabi crop this year itself.

Learned counsel for the respondents submits that the respondents have constructed their houses on a portion of the land in dispute and are residing thereon. It is made clear that the respondents No.1 to 4 shall handover the possession of the land as directed above of the vacant land which does not have the houses within the period of one week and the respondents who are in possession of the land having constructed their hutments and are residing in the same shall vacate and hand over the possession of the land to the petitioners within a period of three months from today, failing which the petitioners shall be free to move an application before the Tehsildar who would at the end of the period of three months immediately take steps to handover the possession even of the remaining area to the petitioners.

Consequently, this writ petition is allowed, as aforesaid. The application dated 14.08.2006 also stands disposed of.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.